



**Upper Tribunal  
(Immigration and Asylum Chamber)  
001330**

**UI-2021-001329 & UI-2021-  
001330**  
(HU/18820/2019 & HU/18826/2019)

THE IMMIGRATION ACTS

Heard at George House, Edinburgh  
on 11 May 2022

Decision & Reasons Promulgated  
on 12 July 2022

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

**KHADIJA SHIKHO & ALI BUSTAN**

Appellants

and

**ENTRY CLEARANCE OFFICER**

Respondent

For the Appellants: Mr R Middleton, of Loughran & Co, Solicitors  
For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellants are grandmother and grandson, citizens of Syria, living there in a refugee camp. They applied for entry to the UK for family reunion under part 11 of the immigration rules. Their “sponsor” is the son of the first appellant and the uncle of the second.
2. The ECO refused the applications (i) because the appellants, as extended family members, did not meet the requirements of the rules, and (ii) because their circumstances, although they had lived for the previous 19 months in a refugee camp, did not amount to “exceptional circumstances”

or to “compassionate factors” to justify a grant of leave under article 8 of the ECHR, outside the rules.

3. FtT Judge McLaren dismissed the appellants’ appeals by a decision promulgated on 9 November 2021. At [33] she concluded that although there was “familial love and affection between the sponsor and the appellants and a great deal of concern about how they are presently living in Syria, that is not the legal test and insufficient to constitute family life”.
4. That was the crux, because the appellants accept that they do not meet the rules, and if there had been family life, the Judge, at [40], would have allowed the appeals.
5. The grounds of appeal dispute the finding on family life in terms of (i) failure to give anxious scrutiny to the evidence, in particular from the first appellant’s other three sons in the UK (ii) failure to consider the totality of the evidence (iii) dichotomy of findings between close and mutually supportive family links, yet no existing family life and (iv) error in failing to note that the sponsor cohabited in Syria with his wife and mother and “enjoyed a family life together as a family unit with the sponsor’s siblings”.
6. On 10 January 2022 FtT Judge Monaghan granted permission on all grounds, but observing that the Judge might have erred in fact on the sponsor entering into a post-flight marriage, rather than living in an extended unit as above.
7. The ECO responded on 27 April 2022 to the grant of permission. It is argued that the parties were all adults, it was for the Judge to determine whether there were ties within the scope of article 8, and no error was made on a point of law.
8. The first appellant’s four sons in the UK each live separately with their immediate family. She has daughters in Syria, and grandchildren in both countries.
9. Submitting further to the grounds, Mr Middleton said that the Judge focused on the relationship between the first appellant and the sponsor, losing sight of the effect of the decision on all the family members in the UK. He accepted that the logic of that argument was that the first appellant has family life for article 8 purposes not only with the sponsor, but with all her sons in the UK. He also accepted that the cases of the two appellants were not identical, and that the case for the second appellant was the weaker. (The second appellant is the son of another brother. He and his wife have been missing since 2018.)
10. On ground (iv), Mr Middleton referred to evidence that the sponsor, with his wife and child, lived with his mother and the rest of the extended family in Syria prior to his departure in 2014. His wife and child joined him after he entered the UK and was recognised as a refugee. The Judge erred in saying that “once he was in the UK” he married and “established his

own family life with his wife and children”. Mr Middleton submitted that after the sponsor’s marriage in Syria, he remained part of the family unit there, and his wife, and later his child, became parts of that evolving and subsisting unit.

11. Finally, Mr Middleton submitted that the decision of the FtT should be set aside; on all the evidence, the UT should find that family life existed among the appellants and their relatives in the UK; and the outcome should be reversed, by allowing the appeal, as brought to the FtT.
12. Mr Mullen said the attention of the FtT had not been drawn to *KF and others* (entry clearance, relatives of refugees) Syria [2019] UKUT 00413 (IAC). That case is not mentioned in the FtT’s decision, but Mr Middleton pointed out that it was referred to, and a copy was among the appellants’ materials in the FtT.
13. Neither party suggested that any of the points drawn into the headnote of *KF* bear significantly on present issues. Mr Mullen referred to the body of the decision:

[13] We think it helpful to set out some important starting points.

[14] First, it is the sponsor’s rights under Article 8 which are engaged. It is he, and only he, who is in the UK. By Article 1 of the ECHR the UK undertook ‘to secure to everyone within [its] jurisdiction the rights and freedoms defined in section 1 of this Convention’. Those rights and freedoms include, of course, Article 8. There are certain exceptions where the Convention has an extra-territorial reach, but none of them is relevant in the present context. As Ms Meredith [*counsel for appellants*] submitted, there are cases where Article 8 has been held to require the admission of someone who is outside the UK, but that is because their exclusion would be an impermissible interference with the private or family life of a family member who is in the UK – see for instance *Secretary of State for the Home Department v Tahir Abbas* [2017] EWCA Civ 1393. We do not therefore agree with Ms Meredith that the Appellants themselves have Article 8 rights for present purposes since they are all in Jordan.

14. Mr Mullen said that the FtT had not found that family life for purposes of article 8 existed in Syria, and could not have done so, because that was outside its ambit or even of its jurisdiction. The appellants, as in *KF*, had no article 8 rights. He also sought to persuade me that the FtT fell into no error on the facts. Alternatively, if there was such an error, he submitted that the finding at [30] was nevertheless sound, and family life had not existed “between the first appellant and the sponsor since 2014, at the very latest”. For the second appellant there was no error in the findings at [31] that his family life had been with his parents until 2018 and that although there had been family life between both appellants since 2018, that was “not the issue before the tribunal”. The decision of the FtT should stand. If it did fall to be remade, the UT should find that family life was not established, and again dismiss the appeal.
15. In course of submissions representatives referred to [34] of the decision, where the Judge finds it “hard to escape the conclusion that the assertion of ... family life with the sponsor is but a construct to ensure that the

appellants can come to the UK by any means". Mr Mullen accepted that appears to be a harsh observation, and inconsistent with the Judge's broad acceptance of the evidence as disclosing close and mutually supportive family links.

16. I reserved my decision.
17. I am not persuaded that the appeals fail on the jurisdictional point of the appellants having no rights under article 8. That is not the approach taken in the decisions of the ECO, which are based on their cases not reaching the necessary level of "exceptional circumstances" or "compassionate factors". I also note that the rule 24 response does not take the line that the appeals should have been dismissed, even if the findings on family life were to be set aside.
18. Grounds (i) - (iii) are merely repetition of the case for the appellants, and insistence that their case was so strong as to disclose not only close and mutually supportive family links, but family life within the scope of article 8. There is no error in the Judge's self-directions on the law or in her approach to the evidence. The boundary line is a question primarily of fact. It was for the tribunal to determine where the line was drawn. Except in so far as they overlap with ground (iv), these grounds do not rise above disagreement.
19. The evidence was uncontentious on the sponsor having a wife and child in Syria before leaving in 2014, rather than forming those relationships after coming to the UK, so ground (iv) discloses an error on a matter of fact. The appellants and their representatives have no responsibility for it. The question is whether it is of such materiality as to require the decision to be set aside.
20. The FtT took an overall view on the existence of family life, based not only on this point, and nothing has been shown to be wrong with the reasoning at [29]; but that ends by saying that family life "does not automatically exist in a large supporting loving family", which is not quite conclusive. The point plays a significant part in the further reasoning at [30], which does close the issue.
21. There is another error at [34] in the finding of a "construct ... to come to the UK by any means". Any "construct" of family life was in representatives' (proper) presentation of the case in legal terms. There was not, on the Judge's own findings, any cynical fabrication of a case, as the phrase tends to suggest.
22. The second mistake is not captured by the grounds; the assessment at [34] is expressly in the alternative; and the error is probably one of expression, rather than of veering to an inconsistent view.
23. Taking the two points together, I do not think that the decision survives excision of its errors.

24. Looking again at the evidence of their links, I have no difficulty in reaching similar conclusions to the FtT of love and affection among all the extended family members and the appellants, and of a great deal of concern on the part of relatives in the UK over how the appellants are presently living. No other conclusions could reasonably be drawn.
25. The paradigm cases of family life for article 8 purposes are between husband and wife, or similar partners, and among parents and minor children. While family life is not restricted to the nuclear family and may subsist among adult relatives, that does not amount to family life unless on the basis of additional elements of dependency going beyond normal family ties. Formation by adult children of relationships such as marriage tends to take them beyond the core protection of article 8.
26. Extended family links obviously remained strong in this case, and the circumstances are sympathetic, but the reality is that for many years the first appellant and all her children, since they respectively became adult, and married, have comprised separate, although connected, family units. That was already the case when living near to each other in Syria, and not only since they have moved, at least partly through pressure of events, much further apart.
27. In short, in terms of article 8, there is a series of several interconnected family units, but no evidence which takes extended adult relationships beyond that norm so as to establish one large, single, far-flung family.
28. The decision of the FtT is **set aside**, but in remaking it, the appeals, as brought to the FtT, are again **dismissed**.
29. No anonymity direction has been requested or made.

H Macleman

12 May 2022

UT Judge Macleman

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#### NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent” is that appearing on the covering letter or covering email.